

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

26203

**FILE:** B-212341**DATE:** September 12, 1983**MATTER OF:** International Harvester Company**DIGEST:**

Low bid which contains \$9 variation in unit price between first year price of \$42,009 for solicitation item and other year prices in multiyear procurement may be accepted, despite violation of the solicitation's level pricing provision, where the record shows that there would be no prejudice to the other bidders, given the \$2,258,395 difference between the low bid and the second low bid.

International Harvester Company (IHC) protests the bid of General Motors Corporation (GMC) under invitation for bids (IFB) DAAE07-82-B-5550 issued by the United States Army Tank-Automotive Command, Warren, Michigan. The IFB was a multiyear procurement for quantities of trucks, tractors and dump trucks. No award has been made.

IHC contends that the bid of GMC is nonresponsive because GMC bid a different price for dump trucks in the first year of the 3-year procurement than GMC did for the other 2 years. IHC argues that this violates the IFB's "Multi-Year Procurement" clause which requires that the unit price for each like vehicle be the same for all years.

For the reasons set forth below, we deny IHC's protest.

IHC, GMC and Mack Truck, Inc., were the bidders on the IFB. The IFB was solicited on an all-or-none multiyear only basis. GMC was the apparent low bidder with a total bid price of \$29,573,887. IHC was the apparent second low bidder with a total bid price of \$31,832,282.

The portion of GMC's bid which IHC claims was noncompliant pertained to 39,500-pound dump trucks that were specified as contract line items (CLINS) 1003AA, 2003AA and 3003AA. GMC's bid on these items was as follows:

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<u>1st Program Year</u>	<u>2nd Program Year</u>	<u>3rd Program Year</u>
1003AA	2003AA	3003AA
6 each	132 each	126 each
\$42,009	\$42,000	\$42,000

The cover sheet to the IFB, DD Form 1707, entitled "Information to Offerors or Quoters," contained a paragraph designated "Multi-Year Procurement," which provided, in pertinent part, as follows:

"The unit price of each like vehicle item in the multi-year requirement shall be the same for all program years \* \* \* Unit prices for CLIN's 3003AA and 2003AA must be identical to CLIN 1003AA \* \* \*

"Bid submitted other than as herein set forth shall be deemed nonresponsive."

IHC asserts that because GMC did not bid a constant price for the entire contract, GMC's bid failed to follow the multiyear procurement paragraph of the IFB, thus rendering GMC's bid nonresponsive. IHC argues that the multiyear procurement paragraph was a material provision in that it required a bidder to bid the same price for an item for each contract year regardless of whether that bidder's anticipated production costs might vary considerably from one year to another. IHC contends that a bidder who bid varying prices in any of the procurement years would have a great advantage over the other bidders who bid the same price for all years. According to IHC, a noncompliant bidder could significantly lower its overall bid if such bidder did not have to "compensate for the very high degree of risk" that is unavoidable in bidding for future procurement years where production costs are the least predictable.

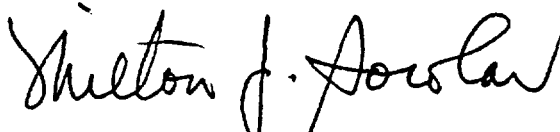
The Army argues that the variation in GMC's pricing for CLIN 1003AA was the result of an apparent clerical error and, as such, does not represent a material deficiency which renders GMC's bid nonresponsive. The Army takes the position that the facts of this procurement show that GMC's failure to level price on the CLINS for dump trucks constitutes a minor informality which can be waived under the provision of section 2-405 of the Defense Acquisition Regulation (1976 ed.).

We agree with the Army. Here, the spread between IHC and GMC is so great that we must conclude that even had IHC been able to vary its item bid for each year of the multiyear procurement, IHC would not have been low. See Keco Industries, Inc., 54 Comp. Gen. 967 (1975), 75-1 CPD 301. The record shows that GMC's total bid was \$2,258,395 lower than IHC's, while the difference in GMC's bid from a level bid was \$54. Under the circumstances, we find no prejudice to IHC in allowing the Army either to accept GMC's bid as it stands or to accept GMC's bid as reduced by the \$54 amount.

IHC argues, however, that this case must be distinguished from this Office's prior decisions because here there was a clear warning in the IFB that failure to comply with multiyear pricing provisions would render any submitted bid nonresponsive. While we did note in Keco Industries, Inc., supra, that nowhere in that solicitation was there a precautionary legend warning bidders of the consequences of failing to comply with multiyear pricing requirements, the determinative issue in that case was whether the particular bid deviation "worked to the prejudice of other bidders for award." As we stated in Herman H. Neumann Construction, 55 Comp. Gen. 168 (1975), 75-2 CPD 123:

"\* \* \* The philosophy of this Office is to focus primarily on whether the deviation in bid prejudices other bidders. \* \* \*" See also Keco Industries, Inc., B-195529.2, January 7, 1980, 80-1 CPD 17.

We deny IHC's protest.

for   
Comptroller General  
of the United States